



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

March 23, 2004

In re application of : JASON S. ALTMAN  
Serial No. : 10/037,994  
Filed : January 3, 2002  
For : **APPARATUS FOR PROTECTION DURING THE USE OF HAIR DYE OR COLORING**  
Examiner : Katherine M. Moran  
Art Unit : 3765  
Our File No. : 10622.6802

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**CERTIFICATE OF MAILING**

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**MAR 30 2004**

Dear Sir:

**TECHNOLOGY CENTER 143700**

Responsive to the Office Action mailed February 23, 2004 2003, applicant respectfully makes the following comments.

The Examiner indicated that Applicant's reply of 2/20/04 was allegedly not in proper format pursuant to section 37 C.F.R. §1.173(d). Applicant respectfully disagrees with the Examiner's position and respectfully submits that the previous reply of 2/20/04 is in proper format pursuant to section 37 C.F.R. §1.173(d). Specifically, the Examiner stated:

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"This statute outlines the proper format for amending claims. The matter to be omitted by reissue must be enclosed in brackets; and the matter to be added by reissue must be underlined, except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Only new claims should be underlined in their entirety."

Applicant respectfully submits that the Examiner's paraphrasing of 37 C.F.R. §1.173(d) mistakenly eliminates key language that dictates which claims are required to show omissions by brackets and additions by underlining. Specifically, the first paragraph of 37 C.F.R. §1.173(d) states:

*"Changes shown by markings. Any changes relative to the patent being reissued which are made to the specification, including the claims, upon filing, or by an amendment paper in the reissue application, must include the following markings:". (Emphasis Added).*

Thus, since amendments are relative to the patent, not previous amendments, all amendments to claims added to the original patent claims are merely shown with the entire claim underlined since the entire claim (even if amended from a previous version) is considered new as relative to the patent. Only amendments to the original patent claims are subject to the bracketing and underlining requirements referenced above. See MPEP §1453.

At page 1400-58 of MPEP §1453 an example is provided which Applicant respectfully submits is directly on point. There it is stated in pertinent that:

"Amendment of New Claims

An amendment of a "new claim" (i.e. a claim not found in the patent, that was previously presented in the reissue application) must be done by presenting the amended "new claim" containing the amendatory

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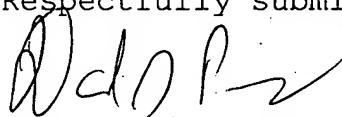
material, and completely underlining the claim. The presentation cannot contain any bracketing or other indication of what was in the previous version of the claim. This is because all changes in the reissue are made vis-à-vis the original patent, and not in comparison to the prior amendment."

Accordingly, as all claims amended by Applicant's 02/20/04 Reply involved claims added to the original patent claims, they all should properly be underlined in their entire. Thus, Applicant respectfully submits that its 02/20/04 Reply is in proper format.

Applicant has completely responded to the Office Action dated February 23, 2004. Favorable action is respectfully requested.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,



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